

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO: 08-20517-01

v.

DISTRICT JUDGE THOMAS L. LUDINGTON  
MAGISTRATE JUDGE CHARLES E. BINDER

DAVID TINOCO,

Defendant.

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**MAGISTRATE JUDGE'S REPORT, FINDINGS AND  
RECOMMENDATION CONCERNING PLEA OF GUILTY**

**I. REPORT AND FINDINGS**

On May 27, 2009, this Defendant was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B) and 636(b)(3) for purposes of receiving, on consent of the parties, Defendant's offer of a plea of guilty. The Defendant, along with counsel, appeared before me on May 27, 2009. In open court I examined the Defendant under oath, confirmed the Defendant's consent, and then advised and questioned the Defendant regarding each of the inquiries prescribed by Rule 11(b) of the FEDERAL RULES OF CRIMINAL PROCEDURE. Based upon the Defendant's answers and demeanor, **I HEREBY FIND** 1) that the Defendant is competent to tender a plea, 2) that Defendant's plea was knowingly, intelligently made, and 3) that the offense(s) to which he pled are supported by an independent basis in fact containing each of the essential elements of the offense(s). Therefore, I have ordered the preparation of a presentence investigation report.

## **II. RECOMMENDATION**

For the reasons set forth above, **IT IS RECOMMENDED** that subject to the Court's consideration of the plea agreement pursuant to Rule 11(c) of the **FEDERAL RULES OF CRIMINAL PROCEDURE**, the Defendant be adjudged guilty and have sentence imposed.

## **III. REVIEW**

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596 (6th Cir. 2006); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *McClanahan v. Comm'r of Social Security*, 474 F.3d 830, 837 (6th Cir. 2006); *Frontier Ins. Co.*, 454 F.3d at 596-97. Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ **Charles E. Binder**

CHARLES E. BINDER  
United States Magistrate Judge

Dated: May 28, 2009

## **CERTIFICATION**

I hereby certify that this Report and Recommendation was electronically filed this date, electronically served on Shane Waller and Shawn Sutton, and served on District Judge Ludington in the traditional manner.

Date: May 28, 2009

By s/Jean L. Broucek  
Case Manager to Magistrate Judge Binder